

REMARKS

Favorable reconsideration of this application is requested in view of the above amendments and in light of the following remarks and discussion.

Claims 1-135 are pending in the application. Claims 133-135 are added. Support for the changes to the claims is self-evident from the originally filed disclosure, including the original claims, and therefore no new matter is added.

In response to the restriction and election requirement, the invention of group III, including original claims 74-132 and new claims 133-135, is elected with traverse. Within the invention of group III, species D, examples of which are shown in Figures 10A and 10B, is elected with traverse. Claims 74-78, 82-84, 87, 90-95, 102-119 and 131-135 are identified as reading on the elected species of the elected invention.

The restriction and election of species requirements are traversed for several reasons.

First, regarding the election of species requirement, the Office Action merely includes the conclusory statement that “[t]his application contains claims directed to ... patentably distinct species ...” without stating any basis whatsoever in support of such a finding. This is in violation of MPEP §816, which states:

The particular reasons relied on by the examiner for holding the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given.

In the absence of any annunciated basis, it is submitted that the PTO clearly has not carried forward its burden of proof to establish distinctness.

Secondly, regarding the election of species requirement, MPEP § 806.04(f) requires:

Claims to be restricted to different species must be mutually exclusive.

The outstanding Office Action fails to address in any way whether the pending claims recite mutually exclusive characteristics and this failure provides a further basis for traversing the election of species requirement.

Finally, with regard to both the restriction and election of species requirements, MPEP § 803 states:

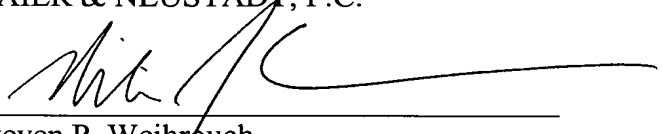
If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

The claims of the present invention would appear to be part of an overlapping search area. For example, each of claims 74-135 is directed to footwear including similar components. Accordingly, the outstanding requirements are traversed on the grounds that a search and examination of the entire application would not place a serious burden on the Examiner.

Therefore, it is requested that the requirement to elect a single invention and species be withdrawn, and that a full examination on the merits of Claims 1-135 be conducted.

Respectfully submitted,

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